

**IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)**

AT MWANZA

PC. CRIMINAL APPEAL NO. 26 OF 2020

(Arising from Judgment/Ruling dated 20/08/2020 of the District Court of Kwimba at Ngudu District in Criminal Appeal No.1 of 2020 Originating Criminal Case No. 20 of 2020 of the Primary Court of Kwimba District at Ngudu Urban)

LENATUS S/O MAGEKO @ MAGEKO..... APPELLANT

VERSUS

SAMWEL S/O GEORGE RESPONDENT

JUDGMENT

Date of last Order: 23.02.2021

Date of Judgment: 25.02.2021

A.Z.MGEYEKWA, J

The Appeal originated from Primary Court of Kwimba in Criminal Case No. 20 of 2020, the appellant was charged with an offence of Obtaining Goods by False Pretence contrary to section 302 of the Penal Code Cap. 16 [R.E 2019]. Aggrieved he decided to appeal but found himself that he was out of time, therefore, he filed an application seeking for extension of time to file an appeal out of time before the District Court of Kwimba at Ndugu in

Criminal Appeal Case No. 02 of 2020. The District Court dismissed his application.

Dissatisfied, the appellant filed the instant appeal which contains five grounds of appeal as follows:-

1. *That the Magistrate erred in fact and in law by holding that the applicant has failed to account for days of delay.*
2. *That the Magistrate erred in fact and in law by holding that the applicant has failed to establish a sufficient cause for his delay.*
3. *That the Magistrate erred in fact and in law by not taking to account that it was difficult for the applicant to prepare any meaningful appeal without having the proceedings and copy of Judgment.*
4. *That the Magistrate erred in fact and in law by dismissing the application which was not contested by the respondent.*
5. *That the Magistrate erred in fact and in law by not according to the applicant fair hearing while entertains his application for extension of time.*

When the matter was called for hearing the appellant appeared in person, unrepresented while the respondent did not appear even after being duly being served. Therefore the court continued with hearing against the respondent.

Arguing in support of the grounds of appeal the appellant opted to consolidate the grounds of appeal and argue them together. He was brief and straight to the point he prayed for this court to adopt his grounds of appeal and form part of his submission. He lamented that the District Court ignored his grounds for extension of time while it was not his fault he was within time. He added that he wrote a letter requesting copies of judgment and proceedings, the court delayed issuing the copies. He went on to state that astonishingly the District Court dismissed his application.

In conclusion, he urged this court to allow his appeal.

Having heard the submissions of the appellant, I should state at the outset that in the course of determining these grounds, the issue for determination is ***“Whether the appellant has adduced good reasons to warrant this court to grant his appeal.”***

Having stated the above, I am now set to confront the grounds of contention as enumerated above, all grounds of appeal are intertwined, and therefore I will determine them together.

The appellant's grounds are centered on grounds of extension of time, the appellant complained that the trial court did not consider his grounds for extension of time. First of all, I want to make it clear that the trial court was right to decline to condone time to the appellant because attaching copies of Judgment and trial court proceedings is not a legal requirement

in matters originating from the Primary Court. Now I will scrutinize the court records specifically the applicant's affidavit to find out whether the appellant had stated good reasons for his delay.

Reading the court record and from the oral submission by the appellant, it is evident that the appellant had delayed filing his appeal on time for the reason that the applicant was a layperson, unaware of the process of the court. In the said circumstance, this court had to base its decision on the rights of the parties and not to leave the rights of a litigant to be defeated. In the case of **Ramadhani Ngoni v Ms. Haule and Company Advocates** 1996 TLR 71 it was observed that:-

" ... in order to do justice to the case, especially in a case where a layman, unaware of the process of the machinery of justice, tries to get remedy procedural rules should not be used to defeat justice."

The position of the law is settled and clear when it comes to application for extension of time to appeal. There are a plethora of legal authorities in this respect. In the case of **Benedict Mumelo v Bank of Tanzania** [2006] 1 EA 227 the Court of Appeal of Tanzania decisively held:-

"It is trite law that an application for extension of time is entirely in the discretion of the Court to grant or refuse it, and that extension of time may only be granted where it has been

sufficiently established that the delay was with sufficient cause."

The appellant in his affidavit has raised other grounds as stated in his affidavit specifically paragraph 11 and 12. The appellant stated that he has great chances of success if his application will be granted and in the interest of justice he urged the District Court to allow his application and allow him to file an appeal in order to allow the parties to be heard on merit. In my respectful view, the appellant has shown that he has interest to pursue his right.

Needless to say, the court has interpreted and distinguish categories of delay between real delay and technical delay for purposes of determining whether the application for extension of time merits granting or not. This was clearly stated in the landmark case of **Fortunatus Masha v William Shija & Another** [1997] TLR 154 in which the court held that;

"A distinction had to be drawn between cases involving real or actual delays and those such as the present one which clearly only involved technical delays in the sense that the original appeal was lodged in time but has been found to be incompetent for one or another reason and a fresh appeal had to be instituted. In the present case, the applicant had acted immediately after the pronouncement of the ruling of the court

striking out the first appeal. In these circumstances, an extension of time ought to be granted."

A cursory perusal of the court records reveals that the applicant delayed filing her appeal based on technical ground, the applicant apart from being a layperson, it is apparently clear from records that he took effort to file his appeal. It was out of his control, he made several follow to make sure he wants to file his appeal timely without success merely on technical grounds.

I consider the fact that the right of appeal is not only a statutory one but also a constitutional right, of which a person cannot be lightly denied when the High Court is there to determine the applicant's rights.

The above being the circumstances and for the interest of justice, I proceed to grant the appeal and allow the appellant to file his appeal before the District Court.

DATED at Mwanza this 25th February, 2021.


A.Z.MGEYEKWA

JUDGE

25.02.2021

Judgment delivered on the 25th February, 2021 via audio teleconference whereby the appellant was remotely present.




A.Z.MGEYEKWA
JUDGE
25.02.2021